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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,775	01/16/2004	Maria Masae Kulas	CJK-14	8139
36707 7590 04/27/2007 CHARLES J. KULAS 651 ORIZABA AVE. SAN FRANCISCO, CA 94132			EXAMINER GELLNER, JEFFREY L	
			ART UNIT 3643	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/27/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/759,775

Applicant(s)

KULAS, MARIA MASAE

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 12 is objected to because of the following informality:

In line 5, "the supporting stake" lacks antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, line 1, the language of "for encircling vegetation" implies that the claim is claiming the subcombination of an apparatus. However, the language of line 9 of "encircles the vegetations" implies that the claim is claiming the combination of an apparatus and vegetation. The claim is indefinite because it is not known if Applicant is claiming the combination or subcombination. For this office action Examiner considers Applicant to be claiming the subcombination of an apparatus.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sinning (US 1,925,467).

As to claim 12, Sinning discloses an apparatus capable of encircling vegetation with a windscreen (7 of Fig. 1), the windscreen including first and second stakes (1 of Fig. 1) attached (attached through upper 5 and 6 of Fig. 1) to an elongate flexible sheet (7 of Fig. 1), wherein the first and second stakes are perpendicular to a direction of elongation of the flexible sheet (shown in Fig. 1) and are separated by at least a portion of the flexible sheet along the direction of elongation (see Fig. 1), a supporting stake (8 of Figs. 1,2, and 4) suitable for being vertically supported by ground, the apparatus comprising first and second attachment portions (region of 1 that abuts 5 in Fig. 4 for the two stakes (1)) for attaching the first and second stakes so that the stakes are held adjacent and substantially parallel to each other, so that the flexible sheet is capable of encircling the vegetation in a substantially complete loop to form an enclosure that is substantially closed around the sides and open at the top (see Fig. 1); and, a third attachment portion (2 of Figs. 1 and 4) coupled to the first and second attachment portions (shown in Fig. 1), wherein the third attachment portion allows mounting of the apparatus to the supporting stake (through element 2, element 8 is mounted to the rest of the apparatus).

As to claim 13, Sinning further discloses the first and second stakes above and parallel to the supporting stake (Figs. 1, 2, and 4).

As to claim 14, Sinning further discloses the stakes held substantially in-line with the supporting stake (shown in Fig. 2).

As to claim 15, the limitations of claim 12 are disclosed as described above. Not disclosed is the apparatus integral with the supporting stake. Sinning, however, discloses that at three corners the bars are connected by bolts (from col. 2 lines 80-90). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Sinning by making the bars integral and not bolted so as to strengthen the apparatus.

As to claim 16, Sinning further discloses the apparatus removably coupled to the supporting stake (form 12 and 13' of Fig. 4).

As to claim 17, Sinning further discloses an attachment portion (23 of Fig. 1) including a hole (shown in Fig. 1 in that 23 surrounds 1) capable of receiving an end of a stake.

As to claim 18, Sinning further discloses the apparatus capable of being rolled in the direction of the flexible sheet to form a roll for storing (in that sheet and apparatus are considered a roll when collapsed).

As to claim 19, Sinning further discloses the apparatus when unrolled can be cut (sheet can be cut) in a transverse direction of the sheet during a dispensing operation.

### ***Response to Arguments***

Applicant's argument filed 5 June 2006 have been fully considered but they are not persuasive. Applicant's argument is that Moffit does not show a ““substantially complete loop””

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or an “an enclosure that is substantially closed around the sides and open at the top” (Remarks page 5, middle of page). Examiner has changed to prior art that discloses these limitations.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Feldpausch and Dennis disclose in the prior art various apparatuses that encircle with open tops.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jeffrey L. Gellner  
Primary Examiner  
Art Unit 3643